IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

INDRA PRAKASH MATHUR VS. STATE OF RAJ.& ORS.

S. B. CIVIL WRIT PETITION NO. 5264/2003
UNDER ARTICLE 226 OF THE CONSTITUTION
OF INDIA.

Date of Order : 04th April, 2005.

PRESENT

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HON'BLE MR. JUSTICE R.P. VYAS

Mr. C.S. Bissa for the petitioner.
Mr. Rameshwar Dave, Dy. Government Advocate.

The instant writ petition has been filed by the petitioner praying therein that the impugned order dated 16.7.2003 (Annexure 4) be declared invalid and the respondents be directed to release the third Selection Grade to the petitioner on completion of 27 years of service, i.e., from the year 1994, with all consequential benefits. It was further prayed that the orders, whereby the petitioner was awarded the punishment of censure, be given prospective effect and prior to that, what was due to the petitioner may be granted.

Brief facts giving rise to the instant petition are as follows:

The petitioner was initially appointed as Assistant Driller vide order dated 22.2.1967 and, thereafter, he was promoted to the post of Driller in the year 1969 and Drilling Foreman, in the year 1985, w.e.f. 1976. The petitioner has now retired on 31.3.2004.

The case of the petitioner is that the petitioner was already granted two promotions and was working on the post of Drilling Foreman and his next promotion was due for the post of Assistant Engineer, which, as per rules, is to be filled in by seniority-cum-merit, and since the petitioner was not granted the promotion to the post of Assistant Engineer though he was possessing all the requisite qualifications, thus, he was entitled for third selection Scale, but was denied, because of the pendency of two Departmental Enquiries under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as the "Rules, 1958").

The first enquiry for submitting wrong facts in muster-roll and for giving loss of Rs.264/- against the petitioner on 8.5.1992 was initiated. In the second enquiry, for loss of some documents in the year 1990, the petitioner was charge sheeted on 1.8.94.

Further case of the petitioner is that the first enquiry stood concluded vide order dated 26.2.1999 (Annexure 2) and the petitioner was punished with censure, holding that he was negligent in discharging his duties. The second enquiry stood concluded on 29.5.2003 (Annexure 3) and, in the second enquiry, the petitioner was punished with the same punishment of censure.

Further case of the petitioner is that in both the enquiries, since the petitioner stood punished with censure , he was entitled to grant of the third Selection Scale from the year, 1994. However, the respondents, vide order dated 16.7.2003 (Annexure 4) denied the third Selection Grade to the petitioner, on the ground that the petitioner has been punished with censure twice, therefore, he is not entitled to the grant of the third Selection Grade from the year, 1994. According to the respondents, the petitioner is entitled to the grant of third Selection Grade from 29.5.2005 as mentioned in Annex 4.

Being aggrieved by the order dated 16.7.2003 (Annexure 4), the petitioner has preferred the present writ petition.

Heard learned counsel for the parties and perused the record.

It is submitted by the learned counsel for the petitioner that taking into account the stagnation of employees in various Departments, the Government of Rajasthan issued a Circular dated 25.1.1992 (Annexure 1) providing various Selection Scales to employees and give financial benefits. Thereafter, vide corresponding order dated 25.1.1992, in order to remove stagnation, the Government has made clear that an employee, who is Class -IV, Ministerial or in sub-ordinate services and those holding isolated posts and are working in Rajathan Subordinate Services and fixed in Revised Pay Scale Rules, 1989, (hereinafter referred to as the "Rules, 1989) on completion of their 9, 18 and 27 years of service and are fulfilling other conditions mentioned therein may be given the Selection Scale. Thus, it is submitted by the learned counsel for the petitioner that the impugned order dated 16.7.2003 (Annexure 4) is ex facie illegal and cannot be sustained in the eye of law as the same is against the Notification dated 25.1.1992 (Annexure 1).

The next argument raised by the learned counsel for the petitioner is that the impugned order dated 16.7.2003 (Annexure 4) has been passed on the basis that the petitioner has been awarded the punishment of censure twice, therefore,

he is not entitled to third Selection Scale from 1994. In this respect, it is submitted by the learned counsel for the petitioner that as per Rule 20 of the Rajasthan Service Selection Rules (hereinafter referred to as "the Selection Rules") regarding punishment of censure not an impediment in granting Selection Scale with reference to letter No.Ra.Ma./Bhu.A./E 3 P14/88 dated 24.11.1990, the punishment of censure will not, in any way, come in the way of an employee while granting him Selection Scale. Therefore, the impugned order dated 16.7.2003 (Annexure 4), enabling the petitioner for grant of Selection Scale w.e.f. 29.5.2005 on account of awarding two punishments of censure from 29.5.2003, is illegal, arbitrary, without jurisdiction and violative of Articles 14 and 16 of the Constitution of India.

It is also submitted by the learned counsel for the petitioner that for the sake of argument, even if it is assumed that censure is a punishment, then, too, in such a situation, the punishment should be awarded from the date when the petitioner became entitled to the grant of the Selection Grade, i.e., 1994, on completion of 27 years of service, and not from the dates of conclusion of the enquires and passing the orders of censure, i.e., 26.2.1999 and 29.5.2003 respectively, as mentioned in Annexure 4. According to the him, the period of punishment should not be counted from the dates of conclusion

of the enquiries, and passing the orders of censure i.e.,26.2.1999 and 29.5.2003 respectively and the grant of the third Selection Grade should not be made applicable from 29.5.2005, as mentioned in Annexure 4 dated 16.7.2003.

In the present case, the respondents have given prospective effect to the orders of censure dated 26.2.1999 and 29.5.2003 respectively , on account of which, the petitioner has been made entitled to the grant of third Selection Grade from 29.5.2005, as mentioned in Annexure 4 dated 16.7.2003.Thus, the respondents have illegally withheld the third Selection Scale of the petitioner, which, according to the learned counsel for the petitioner, was due to be granted to him, in the year, 1994. In this view of the matter, the action of the respondents is wholly illegal, arbitrary and not sustainable in the eye of law. Even otherwise also, the promotional post is to be filled on the basis of seniority-cum-merit, so punishment of censure cannot be a valid ground for denying Selection Scale to the petitioner.

The next argument raised by the learned counsel for the petitioner is that before passing the impugned order dated 16.7.2003 (Annexure 4), the petitioner has not been granted the opportunity of hearing. Thus, he prays that the impugned order (Annexure 4) may be quashed and set aside.

Lastly, it was submitted by the learned counsel for the petitioner that by not granting Selection Scale to the petitioner by the Respondents from the year, 1994, the petitioner has been put to a great financial loss which will result into loss of his post retiral benefits. Thus, keeping in view the aforesaid facts and circumstances of the case, the impugned order dated 16.7.2003 (Annexure 4) is violative of Articles 21 and 300-A of the Constitution of India and the same is liable to be quashed and set aside by this Hon'ble Court.

Controverting the submissions, learned counsel for the respondents submits that for the purpose of Selection Grade on completion of 9, 18 and 27 years of service, an incumbent is required to have seven years' satisfactory services. Since the petitioner was awarded the penalty of censure twice in Departmental Enquiries conducted against him by orders dated 26.2.1999 and 29.5.2003 respectively, therefore, he is not entitled to get the Selection Grade.

It is abundantly clear from the directions of the State Government, issued from time to time, vide Circular No.F.20 (1) FD 9 Gr.2) /92 – Pt.VI dated 24.7.1995 (Annexure R/1)and letter of the Assistant Secretary dated 3.10.2002 (Annexure R/2)

addressed to the Chief Engineer, Ground Water Department, Jodhpur, with reference to his letter No.F.6 (49) (6) Estt./02/301 dated 20.9.2002, regarding grant of third Selection Grade to Shri Ram Chandra Parihar, Cleaner, on completion of his 27 years of service that an employee is entitled for grant of Selection Grade with one year delay from the date of such entitlement in the cases of penalty of censure. Similarly, the petitioner was awarded the penalty of censure twice, therefore, he too, is entitled for grant of third Selection Grade from the date of awarding the punishments of censure (26.2.1999 and 29.5.2003 respectively) , with two years delay ,i.e. from 29.5.2005. Thus, according to the learned counsel for the respondents, the petitioner has rightly been denied the third Selection Grade, on completion of 27 years of service, prior to 29.5.2005.

It is further submitted by the learned counsel for the respondents that the Circulars issued by the State Government from time to time, cannot be given retrospective effect.

I have heard scanned, scrutinized and evaluated the rival contentions advanced by both the learned counsel for the parties and gone through the entire record carefully.

While taking into account the rival contentions

advanced by the learned counsel appearing for the parties and looking to the facts and circumstances of the case, it is admitted position on record that the State Government has issued Notification No.F.20(1)FD(Gr.2)/92 dated 25.01.1992 (Annexure-1) prescribing Selection Grades for the employees in Class IV, Ministerial and sub-ordinate services and those employees who are holding isolated posts as well as their fixation of pay in Selection Grades.

The petitioner was subjected to two Departmental Enquiries way back in the year 1992 and 1994 respectively. In both the enquiries, the petitioner was found guilty and he was punished with censure vide orders dated 26.2.99 (Annexure-2) and 29.05.2003 (Annexure-3).

It is also admitted position on record that the petitioner has completed his 27 years of service in the year 1994, and the Third Selection Grade became due to him during that year, but, benefit of the same was not extended to him by the respondents, as two aforesaid enquiries were pending against him. It is also admitted position on record that the first enquiry was concluded in the year, 1999 and the second enquiry was completed in the year, 2003.

It is submitted by the learned counsel for the petitioner that both the enquiries initiated against the petitioner stand concluded vide orders dated 26.2.99 (Annex.2) and 29.5.2003 (Annex.3) respectively by awarding him two punishments of censure, and the Third Selection Grade became due to him in the year 1994. But, vide order dated 16.7.2003 (Annexure 4), issued by the respondents, the Third Selection Grade would be payable to the petitioner from 29.5.2005, as the petitioner has already been punished twice by censure vide orders dated 26.2.1999 and 29.5.2003 respectively. The petitioner has attained the age of superannuation on 31.3.2004.

According to the learned counsel for the petitioner, the censure is not a punishment, so the petitioner should be granted the Third Selection Grade after completion of 27 years of service, i.e., from the year, 1994.

Apparently, the petitioner was appointed on 22.2.1967, he has completed twenty seven years of service in the year 1994 and he was eligible for grant of the third Selection Grade during that year. It has been averred in the petition that as per letter of the State Government dated 24.11.1990, punishment of censure will not, in any way, come in the way of an employee while granting him Third Selection Grade.

Even for the sake of argument, if the censure is treated as a punishment, then the petitioner should be granted the third Selection Grade from the year 1996, as he has completed 27 years of service in the year, 1994.

I have also gone through Annexure R/1 produced by the learned counsel for the respondents. It clearly provides that one of the conditions for grant of Selection Grade is that the service record of that employee should be satisfactory. The record of service which makes one eligible for promotion on the basis of seniority shall be considered to be satisfactory for the purpose of Grant of Selection Grade. The promotion of Government Employees who have been awarded the penalty of censure is post poned by one year, since penalty of censure effects promotion by one year. It effects grant of Selection Grade also by one year. It has further been clarified in Circular No.F.15 (10) P.Forec/Const.90/3439 dated 23.7.1992 that penalty of censure shall have no effect while granting Selection Grade to the employee.

For the sake of argument, even if it is assumed that during the service tenure, a person is subjected to an enquiry and that enquiry remains pending for inordiate delay and

ultimately, it results into the punishment with censure, as happened in the present case, then, there appears to be no justification on the part of the respondents in not extending the benefit of Selection Grade to the petitioner after completion of 9, 18 and 27 years of service.

Be that as it may, but the fact remains that the third Selection Grade became due to the petitioner in the year, 1994 and punishments of censure were awarded vide orders dated 26.2.1999 (Annexure 2) and 29.5.2003 (Annexure 3) by virtue of the result of the Departmental Enquiries . Therefore, on that very basis, the period of Selection Grade can be extended only by two years on the basis of two different punishments, which have been awarded by the two aforesaid orders. Thus, the period of Selection Grade could be extended by two years from the date it became due to the petitioner, i.e. 1994, and, in any case, it cannot be extended beyond the year, 1996.

I have gone through the aforesaid relevant provisions regarding extending the Selection Grade to the Government employees, more particularly Annexure R/2 dated 03.10.2002 produced by the respondents. In Annexure R/2 dated 3.10.2002, a reference of one Shri Ramchandra Parihar, Cleaner, Ground Water Department, regarding grant of third Selection

Grade, after completion of 27 years of service, has been made. In that case, he was entitled to the grant of the third Selection Grade from 25.11.1998, but since he was punished by censure twice on 29.7.1992 and 13.8.1993 respectively, he was granted the third Selection Grade from 25.11.2000, i.e., after two years of completing the 27 years of service.

The case of the petitioner is similarly situated to that of Shri Ramchandra Parihar. The Third Selection Grade became due to Shri Ramchandra Parihar from 25.11.1998, but due to two punishments of censure on 29.07.1992 and 13.08.1993 respectively, he was given the Third Selection Grade from 25.11.2000 (though it became due from 25.11.1998), as is evident from Annexure R/2 dated 03.10.2002 produced by the learned counsel for the respondents.

In the instant case, the Third Selection Grade became due to the petitioner from the year 1994, but he was punished by censure twice on 26.2.1999 and 29.5.2003, respectively, so the petitioner ought to have been given the Third Selection Grade from the year 1996. The petitioner has to be given similar treatment as has been given to Shri Ramchandra Parihar, while granting the Third Selection Grade, after completion of 27 years of service, postponing the benefit of the Third Selection Grade by

two years, from the date the Third Selection Grade became due, i.e., 1994 as it has been mentioned in Circular No.F.20(1) FD (Gr.2)/92-Pt.VI dated July 24, 1995 (Annexure R/1) produced by the learned counsel for the respondents-State, that the promotion of Government employees who have been awarded the penalty of censure is postponed by one year. It effects grant of Selection Grade also by one year. However, in the second para of Circular No.15(10) P.Forec/Const.90/3439 dated 23.07.1992, it has been clarified that penalty of censure shall have no effect for granting of Selection Grade. But, in the case in hand, the respondents have wrongly interpreted Rule 20 of the Selection Rules and letter dated 24.11.1990, by giving retrospective effect to the orders of censures and counting the period from the date of completion of the enquiries. Thus, the action of the respondents is wholly illegal, arbitrary and not in accordance with law.

In the result, the writ petition is allowed. The order dated 16.02.2003 (Annexure 4) is quashed and set aside. The respondents are directed to consider the case of the petitioner for extending him the benefit of the Third Selection Scale after completion of his 27 years of service, i.e. from the year 1994 and postponing the benefit of the Third Selection Grade by two years,i.e. he year, 1996 from the date the Third Selection Grade

became due to him. The respondents are also directed to give consequential benefits to the petitioner within a period of two months from the date of receiving a certified copy of this order, if he is entitled to. There will be no order as to costs.

(R.P. VYAS)J.

Anil Arora.